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**UNITED STATES DISTRICT COURT
IN THE NORTHERN DISTRICT OF CALIFORNIA**

TSEE SAECHAO,

Plaintiff,

v.

PERSONIFY FINANCIAL,

Defendant.

Case No.: 3:20-cv-06738

**COMPLAINT AND DEMAND FOR
JURY TRIAL FOR VIOLATIONS
OF:**

1. Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*;
2. CAL. CIV. CODE § 1788 *et seq.*; and
3. Intrusion Upon Seclusion

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Tsee Saechao (“Plaintiff”), by and through his attorneys, alleges the following against Defendant Personify Financial (“Personify” or “Defendant”):

INTRODUCTION

1
2 1. Count I of Plaintiff's Complaint is based upon the Telephone
3 Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal
4 statute that broadly regulates the use of automated telephone equipment. Among
5 other things, the TCPA prohibits certain unsolicited marketing calls, restricts the
6 use of automatic dialers or prerecorded messages, and delegates rulemaking
7 authority to the Federal Communications Commission ("FCC").
8
9

10
11 2. Count II of Plaintiff's Complaint is based upon the Rosenthal Fair
12 Debt Collection Practices Act ("RFDCPA"), CAL. CIV. CODE § 1788 *et seq.*, which
13 prohibits debt collectors from engaging in abusive, deceptive and unfair practices
14 in connection with the collection of consumer debts.
15

16 3. Count III of Plaintiff's Complaint is based upon the Invasion of
17 Privacy Intrusion upon Seclusion, as derived from § 652B of the Restatement
18 (Second) of Torts. § 652B prohibits an intentional intrusion, "physically or
19 otherwise, upon the solitude or seclusion of another or his private affairs or
20 concerns... that would be highly offensive to a reasonable person."
21
22

JURISDICTION AND VENUE

23
24
25 4. Jurisdiction of this court arises under 47 U.S.C. § 227 *et seq.* and 28
26 U.S.C. 1331.
27
28

5. Supplemental Jurisdiction of this court arises under 28 U.S.C. § 1367 because the state law claims are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the US Constitution.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District. Because Defendant transacts business here, personal jurisdiction is established.

PARTIES

7. Plaintiff is a natural person residing in Hercules, Contra Costa County, California.

8. Plaintiff is a “debtor” as defined by Cal. Civ. Code §1788.2(h).

9. Defendant is a “debt collector” as defined by Cal. Civ. Code §1788.2(c).

10. Defendant is attempting to collect on a “consumer debt” as defined by Cal. Civ. Code §1788.2(f).

11. Defendant is a financial services company engaged in the business giving out personal loans. Defendant's principal place of business is located at 15373 Innovation Drive, Ste. 250, San Diego, CA 92128. Defendant can be served

1 through its registered agent, Corporation Service Company, located at 15 West
2 South Temple, Suite 600, Salt Lake City, Utah 84101.

3
4 12. Defendant acted through its agents, employees, officers, members,
5 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
6 representatives, and insurers.

7
8 **FACTUAL ALLEGATIONS**

9 13. Defendant is attempting to collect an alleged debt from Plaintiff.

10
11 14. In or around July 2020, in an attempt to collect on an alleged consumer
12 account, Defendant began contacting Plaintiff on his cellular phone number ending
13 in 1505.

14
15 15. Defendant was calling Plaintiff primarily when he was at work.

16
17 16. On or about July 15, 2020 at approximately 10:15 a.m., Plaintiff
18 answered a call from Personify. After picking up the call, Plaintiff noticed an
19 unusually long delay and recalls hearing a series of beeps or tones before the
20 representative began speaking, consistent with the use of an automatic dialing
21 system.

22
23
24 17. The representative indicated that Defendant was attempting to collect
25 a debt.

26
27 18. Plaintiff apologized and informed the representative that he could not
28 make a payment because he was struggling financially.

1 19. Plaintiff explained the financial hardship he was facing and informed
2 the representative he was constantly being called while he was at work.

3 20. Plaintiff informed Defendant that he works Monday through Friday,
4 from 7 a.m. until 6 p.m. and requested that Defendant not call him during between
5 those hours.
6

7 21. Despite explaining his financial hardship and revoking consent to be
8 contacted by telephone calls during his work hours, Defendant continued its assault
9 of harassing automated debt collection calls to Plaintiff's cellular phone during his
10 work hours.
11

12 22. Between July 15 and August 31, 2020, Defendant called Plaintiff on
13 his cellular phone approximately one hundred and twenty (120) times.
14

15 23. All of the approximately one hundred and two (120) calls placed by
16 Defendant to Plaintiff were placed during Plaintiff's work hours.
17

18 24. Defendant went as far as calling Plaintiff on his cellular phone up to
19 six (6) times in one day, all of which were during Plaintiff's work hours.
20

21 25. Defendant was aware and had knowledge of Plaintiff's work hours.
22

23 26. Defendant knew that it was inconvenient to call Plaintiff during his
24 work hours because he expressly stated that any calls should be after his work
25 hours.
26

27 27. Defendant's conduct was done willfully and knowingly.
28

1 28. Defendant was aware that Plaintiff had revoked consent to be called,
2 and despite this, Defendant continued to place automated debt collection calls to
3 Plaintiff's cellular phone.
4

5 29. Defendant's calls were excessive and done with the purpose of
6 attempting to harass Plaintiff into making a payment on the account.
7

8 30. The conduct was not only willful but done with the intention of
9 causing Plaintiff such distress, so as to induce him to pay the debt.
10

11 31. Further, the conduct was done with such frequency so as to harass
12 Plaintiff and cause him great annoyance during his work hours.
13

14 32. Plaintiff attempted to explain his situation and his work hours to
15 Defendant in an attempt to get the calls to stop while he was at work, however,
16 Defendant continued to lay siege on Plaintiff's cellular phone with automated debt
17 collection calls only during his work hours.
18

19 33. Defendant acted maliciously and subjected Plaintiff to oppression.
20

21 34. Due to Defendant's actions, Plaintiff has suffered from immense
22 emotional and mental pain and anguish, including but not limited to, stress, anxiety,
23 headaches, sleepless nights, embarrassment and humiliation.
24

25 **COUNT I**
26 **(Violations of the TCPA, 47 U.S.C. § 227)**

27 35. Plaintiff incorporates by reference all of the above paragraphs of this
28

1 Complaint as though fully stated herein.

2 36. Defendant violated the TCPA. Defendant's violations include, but are
3 not limited to the following:
4

5 a. Within four years prior to the filing of this action, on multiple
6 occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii)
7 which states in pertinent part, "It shall be unlawful for any person
8 within the United States . . . to make any call (other than a call made
9 for emergency purposes or made with the prior express consent of the
10 called party) using any automatic telephone dialing system or an
11 artificial or prerecorded voice — to any telephone number assigned to
12 a . . . cellular telephone service . . . or any service for which the called
13 party is charged for the call.
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18 b. Within four years prior to the filing of this action, on multiple
19 occasions, Defendant willfully and/or knowingly contacted Plaintiff
20 using an artificial prerecorded voice or an automatic telephone dialing
21 system and as such, Defendant knowing and/or willfully violated the
22 TCPA.
23
24

25 37. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is
26 entitled to an award of five hundred dollars (\$500.00) in statutory damages, for
27 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds
28

1 that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled
2 to an award of one thousand five hundred dollars (\$1,500.00), for each and every
3 violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
4

5 **COUNT II**
6 **(Violations of CAL. CIV. CODE § 1788 *et seq.*)**

7 38. Plaintiff incorporates by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.
9

10 39. Defendant violated the RFDCPA. Defendant's violations include, but
11 are not limited to, the following:
12

13 a. Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a
14 telephone to ring repeatedly or continuously to annoy the person
15 called;
16

17 b. Defendant violated CAL. CIV. CODE § 1788.17 by collecting or
18 attempting to collect a consumer debt without complying with the
19 provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the
20 United States Code (Fair Debt Collection Practices Act).
21

22 i. Defendant violated Cal. Civ. Code § 1788.17 by violating 15
23 U.S.C. § 1692(c)(a)(1) by communicating with a consumer in
24 connection with the collection of a debt at any unusual time or
25
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28

1 place or a time or place known or which should be known to be
2 inconvenient to the consumer;

3 ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
4 U.S.C. § 1692d by engaging in conduct, the natural
5 consequence of which is to harass, oppress or abuse any person
6 in connection with the collection of the alleged debt;
7

8 iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
9 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or
10 engaging Plaintiff in telephone conversations repeatedly; and
11

12 iv. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15
13 U.S.C. § 1692f by using unfair or unconscionable means in
14 connection with the collection of an alleged debt;
15
16

17
18 40. Defendant's acts, as described above, were done intentionally with the
19 purpose of coercing Plaintiff to pay the alleged debt.
20

21 41. Defendant was aware of Plaintiff's financial situation, that it was
22 calling him during his work hours, and that he requested to be called only after
23 work hours. Despite this, Defendant continued to call Plaintiff during his work
24 hours in an attempt to harass him to pay the debt.
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43. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44. Restatement of the Law, Second, Torts, § 652(b) defines intrusion upon seclusion as, “One who intentionally intrudes... upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person”.

45. Defendant violated Plaintiff's privacy. Defendant's violations include, but are not limited to, the following:

- 10 -
COMPLAINT AND DEMAND FOR JURY TRIAL

intrusion on Plaintiff's privacy and solitude.

c. Defendant's conduct would be highly offensive to a reasonable person as Plaintiff received calls that often-interrupted Plaintiff's work.

d. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

46. As a result of Defendant's violations of Plaintiff's privacy, Defendant is liable to Plaintiff for actual damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tsee Saechao, respectfully requests judgment be entered against Defendant Personify Financial, for the following:

- A. Statutory damages pursuant to 47 U.S.C. § (b)(3)(B) and 47 U.S.C. § (b)(3)(C);
- B. Declaratory judgment that Defendant violated the RFDCPA;
- C. Statutory damages pursuant to Cal. Civ. Code §1788.30(b);
- D. Actual damages pursuant to Cal. Civ. Code §1788.30;
- E. Costs and reasonable attorneys' fees pursuant to Cal. Civ. Code §1788.30(c);
- F. Punitive damages to be determined at trial, for the sake of example and punishing Defendant for its malicious conduct, pursuant to Cal. Civ. Code § 3294;

1 G. Awarding Plaintiff any pre-judgment and post-judgment
2 interest as may be allowed under the law; and

3
4 H. Any other relief that this Honorable Court deems appropriate.

5 **DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38, Plaintiff hereby demands a trial
7
8 by jury of all issues triable by jury.

9
10 Respectfully submitted this 28th day of September, 2020.

11 **PRICE LAW GROUP, APC**

12
13 By: /s/ Youssef H. Hammoud

14 Youssef H. Hammoud (SBN: 321934)

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